Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
1998 Biennial Regulatory Review -- Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules	)	MM Docket No. 98-93

To: The Commission

COMMENTS OF HERITAGE COMMUNICATIONS, INC.

I. Introduction

1. Heritage Communications, Inc. ("Heritage"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, hereby files its comments to the *Notice of Proposed Rule Making,* FCC 98-117 (rel. June 15, 1998) ("*Notice*") in the above-captioned proceeding. These comments are focused on one aspect of the *Notice*: the Commission's proposal to create an additional class of stations, intermediate between Classes C and C1, to be designated as Class C0.[1] Heritage opposes that proposal for reasons expressed herein. However, should the Commission nevertheless decide to create a new intermediate class, Heritage proposes that the dividing line between the new Class C0 stations and those stations that are eligible to retain Class C status be set at 400 meters height above average terrain ("HAAT"), rather that 450 meters HAAT as proposed in the *Notice*.

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1. *Notice* at ¶¶ 40-44.

2. Heritage is the licensee of WGGC(FM), Glasgow, Kentucky. Under current rules, WGGC is entitled to Class C status since its antenna is located at an elevation of 301 meters HAAT. Under the Commission's proposal, in order to retain Class C status, Heritage would be required to increase the height of WGGC's antenna to 450 meters.[2]

II. Analysis

1. Heritage opposes the creation of a new intermediate classification as the Commission has proposed. While Heritage understands the Commission's concern with regard to overprotection, the inevitable result of the new class C0 will be that FM stations will move closer together, resulting in increased congestion and interference. The listening public will suffer since it will be more difficult to tune in a clear signal.

2. If the Commission nevertheless implements an intermediate classification, the upper limit for the new Class C0 should be set at 400 meters, not 450 meters as the Commission has proposed, for two reasons. The first reason for choosing 400 meters as the minimum height to retain class C status is that 400 meters better reflects the statistical distribution of the heights of Class C antennas than does 450 meters. The Commission's choice of 450 meters appears to be an arbitrary choice, half-way between 300 meters and 600 meters, and is not based on any survey of current facilities. In fact, the median antenna height of Class C stations falls nearer to 400

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2. Heritage has a pending application to increase the height of its antenna by 40 feet. File No. BPH-980513ID. A copy of these comments is being served on the other parties to that proceeding.

meters than 450 meters, and thus 400 meters offers a suitable half-way point for purposes of dividing the existing Class C into two classes.[3]

3. A dividing line of 400 meters also furthers the Commission's goal in creating the new Class C0. Based on its research, Heritage estimates that of the 863 Class C stations, only 76 stations operating near full power (100 kilowatts) have antennas between 400 and 450 meters in height. A minimum height of 400 meters, in effect, would allow these 76 stations to continue operating as Class C without any change. Since the Commission's goal in creating the new C0 class is to avoid overprotecting a large number of Class C stations, a height limitation of 400 meters still furthers that goal given that it entails at most the addition of a mere 76 stations to the protected class.

4. The second reason that a minimum height of 400 meters for Class C status is preferable to a minimum height of 450 meters is that a height of 400 meters is achievable in practice in many more locations than 450 meters. Many existing Class C licensees will wish to take advantage of the proposed three-year construction period to increase their antenna height to the minimum height required to maintain Class C status. However, due to local zoning ordinances and FAA regulations -- factors beyond the control of most licensees -- constructing a tower of 450 meters may not be achievable when a tower of 400 meters would be.

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3. According to the Commission, approximately 60 percent (519 of 863) Class C stations operate with facilities less than 450 meters HAAT. *Notice* at ¶ 42. Heritage's research indicates that approximately 51 percent (443 of 863) operate with facilities less than 400 meters HAAT.

III. Conclusion

For the foregoing reasons, the Commission should set an antenna height of 400 meters above average terrain as the dividing line between the new Class C0 and the restricted Class C.

Respectfully submitted,

HERITAGE COMMUNICATIONS, INC.

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October 20, 1998

CERTIFICATE OF SERVICE

I, Kay Dallosta, a secretary in the law firm of Shook, Hardy & Bacon, LLP, do hereby certify that I have, on this 20th day of October, 1998, sent by first-class U.S. mail, postage prepaid, copies of the foregoing "Comments of Heritage Communications, Inc." to the following:

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